IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 7TH DECEMBER 2006 / 16TH AGRAHAYANA 1928

Crl.MC.No. 3425 of 2006()

[S.T.No.330/2005 OF J.F.C.M-X, THIRUVANANTHAPURAM]

PETITIONER: ACCUSED

G.BABU, AGRICULTURAL OFFICER,
KRISHI BHAVAN, VANDOOR, VANDOOR P.O.,
MALAPPURAM DISTRICT, RESIDING AT VIJAYA COTTAGE,
CHENNILODE, MEDICAL COLLEGE P.O.

BY ADV. SRI.SAJU.S.A
SMT.R.RANJANA

RESPONDENTS: COMPLAINANT AND STATE

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1. G.KRISHNANKUTTY, JAYA NIVAS,
KANJIRAMPARA P.O., THIRUVANANTHAPURAM,
WORKING AS LECTURER IN PHILOSOPHY,
UNIVERSITY COLLEGE, THIRUVANANTHAPURAM.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.C.C.ABRAHAM
PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 07/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3425 of 2006

Dated this the 7th day of December 2006

O R D E R

The petitioner is the accused in a prosecution under Section 138 of the Negotiable Instruments Act. The trial is almost complete. Defence witnesses have been examined. The petitioner/accused cited DW4 as witness on his side. When he was examined DW4 was confronted with a document. DW4 admitted his signature in the document but did not admit the contents, which were typewritten. He took the stand that he had affixed the signature in a blank paper. Obviously taken aback, the accused could not effectively cross-examine him at that point of time. Later, the accused filed a petition to recall DW4. The purpose has been explained clearly. There is a document written in the hand of DW4 which would disprove the theory that he had affixed his signature in a blank paper, the contents of which is, as per the explanation of DW4, allegedly typewritten later by the accused. When that application was made, the learned Magistrate rejected the same for a couple of reasons. Firstly, it was stated that the document had not been produced earlier. It must have been available in the custody of the accused. Why did he not produced it earlier? Secondly, it was noted that the prayer was not supported by an affidavit. Thirdly, it was noted that the document, even if produced and proved, may not advance the case of the accused.

2. I shall carefully avoid any expression of opinion on merits lest it should prejudice the interests of the parties. But the facts reveal the helplessness of the accused. He did not anticipate his witness to turn hostile. But his witness DW4 turned hostile. He was taken aback. He did not, at that point of time, have the requisite material in his possession to confront and contradict him. He has later secured the documents. His prayer is for an opportunity to further examine such witness.

3. The interests of justice which is the signature tune of Section 311 Cr.P.C must certainly have persuaded the court below to invoke such jurisdiction to enable the accused to further cross-examine a witness like DW4 if the allegations are correct. In these circumstances I am persuaded to agree that this Criminal Miscellaneous Case deserves to be allowed subject to terms. The inconvenience caused to the complainant can certainly be directed to be compensated.

4. This Criminal Miscellaneous Case is in these circumstances allowed subject to conditions. The petitioner shall deposit an amount of Rs.250/- (Rupees two hundred and fifty only) as cost payable to the complainant within a period of fifteen days from this date. The learned Magistrate shall allow the petitioner to further examine DW4 if he complies with the said condition.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006